

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNION PACIFIC RAILROAD COMPANY,**

**Plaintiff,**

**vs.**

**PROGRESS RAIL SERVICES  
CORPORATION,**

**Defendant.**

**CASE NO. 8:10CV38**

**MEMORANDUM  
AND ORDER**

This matter is before the Court on the Objection to Order Denying Motion for Leave to File a Motion for Summary Judgment (Filing No. 268) filed by Defendant Progress Rail Services Corporation ("Progress Rail"). For the reasons discussed below, the Objection will be overruled.

On May 14, 2013, Progress Rail filed its Motion for Leave to File a Motion for Summary Judgment (Filing No. 266), requesting that, in light of the Court's ruling on Progress Rail's *Daubert* motion (See Filing Nos. 227, 263), Progress Rail be permitted to file a motion for summary judgment seeking to establish that the Plaintiff is unable to prove an essential element of its case-in-chief, *i.e.*, causation. On May 15, 2013, Magistrate Judge Gossett denied Progress Rail's Motion for Leave, finding that there was insufficient justification for modifying the Court's scheduling order, keeping in mind the July 13, 2012, deadline for filing summary judgment motions and this case's June 11, 2013, trial date. See Fed. R. Civ. P. 16(b)(4) ("A schedule may be modified only for good cause and with the judge's consent.") Progress Rail objects to the denial of its Motion for Leave, contending that there has been no finding that Progress Rail failed to act diligently in bringing its Motion for Leave.

When a party objects to a magistrate judge's order on a nondispositive pretrial matter, a district court may set aside any part of the magistrate judge's order shown to be clearly erroneous or contrary to law. Fed. R. Civ. P. 72(a); 28 U.S.C. § 636(b)(1)(A).

After reviewing the record and Judge Gossett's Order denying Progress Rail's Motion for Leave, the Court finds that Judge Gossett's findings were neither clearly erroneous nor were they contrary to the law. Accordingly,

IT IS ORDERED: the Objection to Order Denying Motion for Leave to File a Motion for Summary Judgment (Filing No. 268) filed by Defendant Progress Rail Services Corporation is overruled.

Dated this 16<sup>th</sup> day of May, 2013.

BY THE COURT:

s/Laurie Smith Camp  
Chief United States District Judge